

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2973 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HOTHI BHURUBHA DEVAJI RAMSNNGJI OF VILLAGE BENDHRA,

Versus

THE STATE OF GUJARAT,

Appearance:

MR SURESH M SHAH for Petitioners
MR DD VYAS for Respondent No. 1
SERVED for Respondent No. 2
SERVED BY AFFIXING for Respondent No. 4
DELETED for Respondent No. 30

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/12/97

ORAL JUDGEMENT

This petition relates to the right of the petitioner as well as respondents nos. 2 to 29 to receive compensation under the Bombay Inams (Kutch Area) Abolition Act, 1958 (hereinafter referred to as "the

Act") in respect of Bandhra Jagir comprising of villages Mota Bandhra, Sanosara, Kotda West and Jadura East of Bhuj Taluka of District Kachchha. It is undisputed that these villages were the Inami villages of erstwhile State of Kachchha and compensation of Rs.5168/determined by the Special Mamlatdar under section 3 of the Act is proper and adequate. However, the question is whether the claimant Devaji Ramsangji alone had an interest in the said Inami Lands or the other claimants Ranaji Mansangji and others also had a share in the said inami lands. Pending litigation, claimants Devaji Ramsangji and Ranaji Mansangji and some others have died and their legal representatives have been brought on the record.

2. The facts undisputed are that the petitioners are the heirs and legal representative of deceased Devaji Ramsangji; that the said Devaji Ramsangji was adopted son of Ramsangji; that the said Ramsangji was the Inamdar of Bandhra Jagir and at the time of death of said Ramsangji, Devaji was a minor and the widow of said Ramsangji, i.e. Hiraba, being unable to manage the estate, handed over the lands for management to the then Maharao of Kachchha; that the management of the said inami lands was handed over to Devaji Ramsangji on his attaining majority; at that time, one Amarji also lodged the claim as co-sharer of the said inami lands; however, said claim of Amarji was not accepted by the Maharao and said Amarji was directed to establish his claim in a court of law; said Amarji did not pursue the matter further; that on commencement of the Act, said Devaji Ramsangji lodged claim for compensation before the Special Mamlatdar empowered to resolve the disputes under sections 7 and 15 of the Act; one Ranaji Mansangji and others also lodged a claim for compensation; the Special Mamlatdar determined the said claims and awarded compensation of Rs. 5168/and recorded a finding that Devaji Ramsangji was the only Inamdar of Bandhra Jagir and that Ranaji Mansangji and others were not the co-sharer as claimed by them; it appears that said Ranaji Mansangji contended before the Special Mamlatdar that the deed of adoption made in respect of Devaji Ramsangji was later on revoked by settling some pieces of lands and on the death of one Karsanji, the natural son of Ramsangji, there being no other heir of deceased Ramsangji, said Ranaji Mansangji and others became the heirs and legal representatives of late Ramsangji and thus, had inherited Bandhra Jagir and had a right to receive compensation under the Act. It was also claimed that the Inam was granted to the Hothi Community of Bandhra village or that it was Dharmada Inam and, therefore, all the residents of village Hothi Community had a share in the Jagir. Said claim was

rejected by the Special Mamlatdar.

3. Feeling aggrieved, Ranaji Mansangji preferred an appeal before the Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal") being Appeal No. 1AA-38/69. The Tribunal, under its judgment and order dated 5th December, 1969, upheld the quantum of compensation determined by the Special Mamlatdar. However, the order refusing the apportionment of compensation and declaring Devaji Ramsangji as the only Inamdar was quashed and set aside. The learned Tribunal remanded the matter to the Special Mamlatdar and directed him to apportion the compensation amongst the Inamdars after the appellants therein (i.e. Ranaji Mansangji and others) obtained competent finding under section 3 on the question whether they too held the inami lands alongwith respondent NO. 2 i.e. Devaji Ramsangji. After the remand, the claim made in respect of Jadura Village was numbered as case No. 4/70 and the claim in respect of the rest of the three villages was numbered as Case No. 3/70. Both the claims were decided on 30th October, 1971. Special Mamlatdar held that Devaji Ramsangji was the only Inamdar of the Bandhra Jagir.

4. Feeling aggrieved, the appeals were preferred before the Government which too were rejected on 31st January, 1973. Feeling aggrieved, Ranaji Mansangji preferred writ petitions being Special Civil Applications Nos. 834 of 1973 and 835 of 1973 before this Court. Said writ petitions were disposed off by this court on 17th January, 1978. The Court made order as under :

"Therefore, the orders dated January 31, 1973 passed by the Special Secretary (Appeals) are without jurisdiction. But the orders passed by the Special Mamlatdar holding that the petitioners were not the co-inamdars are legal and valid and shall survive."

5. Against the above orders, the petitioners therein preferred Letters Patent Appeal which they withdrew on 1st January, 1978 and, thereafter, on 24th July, 1978, preferred Appeals No. Tenancy-AK-38/78 and 39/78 before the Tribunal. Under the judgment and order dated 3rd January, 1981, the Tribunal allowed the appeals partially and set aside the order of the Special Mamlatdar declaring Devaji Ramsangji as the only Inamdar of the Bandhra Jagir and remanded the matter to the Special Mamlatdar for redetermining the claims made by Devaji Ramsangji and Ranaji Mansangji and others. The Tribunal made order as under:

"The result is that both the appeals are allowed and the orders passed by the Special Mamlatdar are set aside. The papers are sent back to the Special Mamlatdar to hold fresh inquiry as per the observations made in this judgment after giving opportunity to both the parties to lead the evidence in support of their respective cases."

6. Feeling aggrieved by the above order of the Tribunal, the petitioners who are the heirs and legal representatives of deceased claimant Devaji Ramsangji, have preferred the present petition before this Court.

7. Learned Advocate Mr. Shah has appeared for the petitioners and has raised several contentions. He has submitted that in Special Civil Application No. 834 of 1973 and 835 of 1973, the petitioners therein had prayed for quashing and setting aside the impugned orders of the Special Mamlatdar dated 30th October, 1971. The Court, however, did not grant the said relief and in view of Explanation (V) to sec.11 of the Code of Civil Procedure, 1908, said relief should be deemed to have been refused. He has further contended that having heard the matters on merits, the Court upheld the legality and validity of the orders made by the Special Mamlatdar holding that the petitioners (Ranaji Mansangji and other claimants) were not the co-inamdars and the appeals preferred against the said order was withdrawn by the said petitioners. The order of the learned Single Judge has, therefore, become final. Since the validity and legality of the orders of the Special Mamlatdar has been upheld by this Court, the learned Tribunal could not have examined the same again and could not have set aside the same. I am afraid, I cannot accept the contention. Upon perusal of the judgment of this Court (Annexure "D" to the petition), it is evident that the Court was examining the authority of the Special Mamlatdar and of Special Secretary (appeals) to decide the matters before them. The Court has observed that;

"The substance of the matter is whether the authority deciding the issue had jurisdiction or not and if he had the jurisdiction, the order would be valid and legal."

It is, thus, apparent that the Court did not go beyond the question of jurisdiction of the authority

concerned to decide the matters at issue. Hence in my view, while saying that;

"the orders passed by the Special Mamlatdar holding that the petitioners were not the co-inamdars are legal and valid and shall survive".

The Court held that the special mamlatdar had jurisdiction to decide the matters at issue and he was competent to determine whether the petitioners (Ranaji Mansangji and others) were the co-inamdars or not. Said judgment, therefore, cannot be read to mean that the Court had examined the claims made by the rival parties on merits and had upheld the contention of Devaji Ramsangji that he was the sole inamdar. In my view, therefore, the appeals before the Tribunal were competent and the tribunal was right in deciding the matters at issue on merits.

8. Next, Mr. Shah has contended that the impugned orders were made by the special mamlatdar on 30th October, 1971 which were challenged before the learned tribunal on 24th July, 1978. He has referred to section 20 of the Act and has submitted that the appeal before the tribunal could have been filed within the period of limitation i.e. within 60 days from the date of the order of the Special Mamlatdar. He has submitted that even if the respondents are deemed to have prosecuted the remedy before the wrong forum (i.e. before the Government), at least, since 1973, the petitioners were aware that the orders made by the Special Secretary were without jurisdiction and they ought to have preferred the appeals before the Tribunal. At that time, however, the respondents did not prefer appeal before the learned tribunal but did not prefer such appeals within sixty days, as required by law, even from the date of the order of this Court. Even the Letters Patent Appeal preferred by the respondents was withdrawn on 1st May, 1978. Thus, considering the said date also, the appeals preferred before the tribunal were filed beyond the prescribed period of limitation and the delay caused in preferring the appeals was not explained at all by the respondents. The tribunal, therefore, ought not to have condoned the delay. Mr. Shah is right in contending that the appeals preferred before the leaned tribunal were grossly delayed. However, power to condone delay is discretionary and, therefore, I do not intend to interfere with the powers exercised by the learned Tribunal in condoning the delay.

9. Mr. Shah has next contended that even otherwise, the appeals preferred before the Tribunal were bad for misjoinder of necessary parties. He has submitted that Ranaji Mansangji and others had lodged a joint claim of being co-sharer in the inami lands. Thus, their right under the Act, was indivisible. All of the said claimants therefore ought to have preferred the appeals before the learned tribunal. However, one of the claimants i.e. Ratubha Jemalji who was claimant no. 16 before the special mamlatdar did not prefer appeals against the orders of the Special Mamlatdar nor was he impleaded as respondent in the appeals before the tribunal. He has submitted that said Ratubha Jemalji was a necessary party and the appeal would not be maintainable in absence of said Ratubha Jemalji. In support of his contention, he has relied upon the judgment of the Supreme Court in the matter of Rajeshwari Amma and Anr. v. Joseph and Anr. (AIR 1995 SC 719). In that matter before the Supreme Court, execution petition was filed by three persons being the legal representatives of deceased Kolappa Pillai. The order of executing Court was carried in revision before the High Court. However, only two of the three applicants were impleaded as respondents. The Court held that the execution petition being of the same property, which was undivided between the decree holders, the order was common and inseparable and since it had become final as against Nilamma, the High Court was not right in setting aside the order as against the appellants. Mr. Shah has also relied upon the judgment of the Supreme Court in the matter of Ch. Surat Singh (dead) and others v. Manohar Lal and others (AIR 1971 SC 240). In the said matter before the Supreme Court, the original plaintiffs preferred appeal against the order of the High Court dismissing the suit. In the appeal, one of the parties was not joined. The Court held that he was a necessary party to the appeal and dismissed the appeal for nonjoinder of necessary parties. Mr. Shah has also relied upon the judgment in the matter of Dwarka Prasad Singh v. Harikant Prasad and others (AIR 1973 SC 655). In the matter before the Supreme Court, in a suit for specific performance, the vendor died during the pendency of the appeal against the decree. The legal representatives were not brought on record. The appeal, thus, abated against the vendor. The Court held that;

"the abatement of the appeal against the vendor
was fatal to the entire appeal as either
inconsistent and contradictory decrees will have
to be passed or proper relief could not be

granted in his or his legal representatives' absence."

Mr. Shah has vehemently argued that all the respondents had made a joint claim of being co sharers of the Bandhra Jagir. Their claim was indivisible. In absence of one of the parties, i.e. Ratubha Jemalaji, the appeals before the learned tribunal were not maintainable. I am afraid, I cannot accept this contention either. The claim made by the respondents was on the basis that the Jagir was granted to the whole of the Hothi Community of Bandhra village and all the Hothis of the village were the sharers in the said inams. Thus, in my view, the claim made by the respondents cannot be said to be indivisible as is asserted by Mr. Shah. Even in absence of said Ratubha Jemalji, the claims of the rest of the claimants could have been determined without affecting rights of any of the parties.

10. Next, Mr. Shah has contended that even on merits, the learned Tribunal was not right in setting aside the orders made by the Special Mamlatdar and in remanding the matters to the Special Mamlatdar for gathering further evidence and redetermining rights of the rival claimants. The contention of Mr. Shah appears to be acceptable. The Tribunal, in its judgment, recorded a finding that Ranaji Mansangji or the other claimants did not raise any dispute or a claim of being co-sharer when the management of the Bandhra Jagir was handed over to Devaji Ramsangji on his attaining majority. The Tribunal has also recorded a finding that the said claimants failed to adduce any evidence in support of their respective claims of being co sharers of the inami lands. However, the tribunal held that Devaji Ramsangji failed to establish that he was the only inamdar of Bandhra Jagir. I am of the view that the learned tribunal is not right in laying the onus of proof on Devaji Ramsangji. In suport of his claim, Devaji Ramsangji had produced order of the then Maharao of Kachchha under which the management was handed over to him on his attaining the majority. Thus, there was a prima-facie evidence in favour of Devaji Ramsangji of his being Inamdar of Bandhra Jagir. Similarly, if Ranaji Mansangji and others had any claim over the said inami lands, onus to prove such right would lie on them. Devaji Ramsangji could not have been expected to provide proof of Ranaji Mansangji and others not being the co-sharers of the inami lands. In my view, Ranaji Mansangji and others failed to produce any cogent evidence in support of their claim and therefore, their claim should necessarily fail. The Special Mamlatdar having considered the evidence

available on the records upheld the claim of Devaji Ramsangji and the same should not have been interfered with by the tribunal and the matter should not have been remanded by the tribunal.

11. In view of the above discussion, this petition is allowed. The impugned judgment and order of the learned Tribunal in Appeals Nos.TEN.A.K. 38/78 and 39/78 passed on 3rd January, 1981 is quashed and set aside. The orders of the Special Mamlatdar passed on 30th October, 1971 in Case No. 4/70 and 3/70 (Annexures "B" and "C" to the petition) are confirmed. Rule is made absolute accordingly. There shall be no order as to costs.

Vyas